IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-12-2006

C O R A M

THE HONOURABLE Mr.JUSTICE R.REGUPATHI

Crl.O.P.No.7312 of 2004

The Dhanlakshmi Bank Limited
Cross Cut Road, Coimbatore
rep by its Authorised Officer,
Mr.P.Ravindran .. Petitioner

Versus

1.Kovai Foods and Beverages
rep by Mr.P.Balasundaram
son of G.Palanisamy

2.Mr.P.Balasundaram

3.Mrs.V.Chandraprabha

4.Mrs.R.Padma

5.M/s.Udayam Leasing and Investments
Private Limited,
427, 100 Feet Road Gandhipuram,
Coimbatore -641 012.

6.Mr.M.Selvam .. Respondents

Prayer: The Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to direct the Chief Judicial Magistrate, Coimbatore, to take the complaint onf file in C.C.No.(unnumbered) of 2003 on the file of the Chief Judicial Magistrate, Coimbatore.

For petitioner ..Mr.Rangarajan for M/s.Rangarajan & Prabhakharan

For respondents ..Mr.H.Karthik Seshadri(For R1 to R3)
Mr.K.Kalyanasundaram (For R4 & R5)
Mr.Kasirajan (For R6).

O R D E R

This petition has been filed to direct the Chief Judicial Magistrate, Coimbatore to take the complaint of the petitioner on file.

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2. The petitioner is Dhanlakshmi Bank Limited. The respondents have borrowed loan from the petitioner-Bank by executing certain documents. Notice has been issued as per Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(hereinafter referred to as the Act). Thereafter, an application has been moved before the Chief Judicial Magistrate, Coimbatore, under Section 14 of the Act to initiate the proceedings against the respondents. Section 14 of the Act reads as follows:

> "Section 14: Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset:- (1)Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him -
>
> (a) take possession of such asset and documents relating thereto; and
>
> (b) forward such asset and documents to the secured creditor.
>
> (2) For the purpose of securing compliance with the provisions of sub-section(1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.
> (3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

3. The application given by the petitioner has been returned with an endorsement as follows:

> "Under Section 14(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, is that the Chief Metropolitan Magistrate or the District Magistrate alone have got powers to entertain such cases. Hence, the complaint is returned for presenting it before proper forum."

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The learned counsel for the petitioner submits that the application would have been accepted by the Chief Judicial Magistrate, but it has been erroneously returned. The learned counsel sought for a direction to the Chief Judicial Magistrate, to take the application on file.

4. I have heard the learned counsel for the respondents in this regard and perused the materials available on record.

5. On perusal of the impugned order it appears that the learned Chief Judicial Magistrate is under misconception. Since the term "Chief Judicial Magistrate" is missing in the Act, instead "District Magistrate" is mentioned, erroneously returned the application. Power has been conferred on the District Head in Metropolitan areas as well as in the non-metropolitan areas to initiate proceedings in this regard. Section 17(1) of the Cr.P.C. reads as follows:

> "The High Court shall, in relation to every metropolitan area within its local jurisdiction, appoint a Metropolitan Magistrate to be the Chief Metropolitan Magistrate for such metropolitan area."

Section 12(1) of the Cr.P.C. reads as follows:

> "In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate."

Section 3(1)(d) of the Cr.P.C. reads as follows:

> "any reference to the Chief Judicial Magistrate shall, in relation to a metropolitan area, be construed as a reference to the Chief Metropolitan Magistrate exercising jurisdiction in that area."

The power conferred with the Chief Metropolitan Magistrate is equal to the Chief Judicial Magistrate in the District level. The learned District Magistrate will be seen only as Chief Judicial Magistrate. The return of the application of the petitioner is erroneous.

6. In view of the facts and circumstances of the case, the return order, dated 15.12.2003, passed by the learned Chief Judicial Magistrate, Coimbatore, is set asides. The Chief Judicial Magistrate, Coimbatore is directed to take the application of the petitioner on file and proceed the case in accordance with law. Accordingly, this Criminal Original Petition is ordered.

ssv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The Chief Judicial Magistrate,
Coimbatore.

2 ccs to M/s.Rangarajan & Prabhakharan, Advocates, SR.60792
1 cc to Mr.K.Kalyanasundaram, Advocate, SR.6089=09
1 cc to Mr.Karthik Seshadri, Advocate, SR.60818

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